

MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY - - JULY 19, 2005 - - 7:30 P.M.

Mayor Johnson convened the regular meeting at 7:42 p.m. Councilmember deHaan led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers Daysog, deHaan, Gilmore, Matarrese, and Mayor Johnson - 5.

Absent: None.

AGENDA CHANGES

(05-342) Mayor Johnson announced that the Resolution Creating Special Newsrack Districts [05-357] would not be heard.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

(05-343) Proclamation recognizing Alamedans for Responsible Transit Shelters (ARTS) and volunteer efforts to install new bus shelters.

Mayor Johnson read and presented the Proclamation to Reyla Graber, Pat Gannon, Jeannie Graham-Gilliat, Lee Harris, and Mel Sanderson; stated that ARTS worked very hard to ensure that there would be unadvertised bus shelters; thanked ARTS and supporters who contributed money to buy the bus shelters.

Reyla Graber thanked the Council for the recognition.

Lee Harris thanked ARTS; stated that he was impressed with the hard work and efforts of everyone involved.

Mel Sanderson, President of the Clara Barton Foundation, stated being available for ARTS was a pleasure.

Susan Decker, Alameda Transit Advocates, thanked the Council and ARTS for working hard to get bus shelters in Alameda; stated she is looking forward to new bus shelters on Park and Webster Streets.

(05-344) Presentation by the Park Street Business Association (PSBA) on the 21st Annual Art and Wine Faire.

Blake Brydon, Chair of the Art and Wine Faire, invited the community to attend the Faire on July 30 and July 31 and presented wine glasses to the Council.

CONSENT CALENDAR

Mayor Johnson announced that the recommendation to authorize the Acting City Manager to execute a Contract with Masayuki Nagase [05-348], the recommendation to authorize the Fire Chief to accept the \$404,087 Awarding of the Assistance to Firefighters Grant [05-349] and the recommendation to adopt specifications and authorize Call for Bids [05-350] were removed from the consent calendar for discussion.

Councilmember Matarrese moved approval of the remainder of the Consent Calendar.

Councilmember Daysog seconded the motion, which carried by unanimous voice vote - 5.

[Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(*05-345) Minutes of the Special Joint City Council and Social Service Human Relations Board Meeting of June 23, 2005 and the Special and Regular City Council Meetings held on July 5, 2005. Approved.

Councilmember Daysog requested that the word "scheduling" be inserted prior to "conflict" in the June 23, 2005 minutes [under Roll Call].

(*05-346) Ratified bills in the amount of \$3,960,630.82.

(*05-347) Recommendation to accept the work of Clyde G. Steagall, Inc., for Alameda Point Pier 3 electrical upgrades, No. P.W. 08-02-08. Accepted.

(05-348) Recommendation to authorize the Acting City Manager to execute a Contract with Masayuki Nagase for fabrication and installation of public art work, Cadence of Water, at the new Main Library.

Mayor Johnson stated that she would like to see a better representation of the artwork.

The Library Director introduced Masayuki Nagase; stated Mr. Nagase has created dozens of public art installations and was the unanimous choice of the Art and Recognition Team.

Mr. Nagase stated the artwork consists of eight medallions measuring 4 feet to 7 feet high; the water element theme represents the City's surrounding bay and beach areas.

Mayor Johnson inquired whether the art would be done in limestone.

Mr. Nagase responded in the affirmative; stated the angle of the forms would catch the morning and afternoon light.

Councilmember deHaan moved approval of the staff recommendation.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

(05-349) Recommendation to authorize the Fire Chief to accept the \$404,087 Awarding of the Assistance to Firefighters Grant for a firefighting training trailer and authorizing funding for the City's matching portion of \$80,817 from the General Fund Reserves.

Mayor Johnson requested that future reports include on-going maintenance and operating costs.

Councilmember Matarrese inquired whether there was an order of magnitude for the maintenance and operating costs for comparison purposes.

The Fire Chief responded that the maintenance costs are expected to be low; the majority of the cost would be for propane gas; there would be an additional cost for moving the trailer out of the area because a diesel truck trailer would be needed.

Councilmember deHaan inquired whether the City has a tractor.

The Fire Chief responded that he has not checked with the Public Works Department; using a City tractor would be the first choice.

Mayor Johnson stated training locally might provide a cost savings.

The Fire Chief stated the closest facility for live fire training is Livermore, which is too far away for on-duty personnel; the community was concerned with the smoke generated by the live fire training at the LinOaks Motel.

Councilmember deHaan moved approval of the staff recommendation.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

(05-350) Recommendation to adopt specifications and authorize Call for Bids for replacement of three (3) marked police vehicles.

Councilmember deHaan inquired whether there was a police vehicle replacement policy currently in place.

The Acting Police Captain responded there is not a standing policy; the general practice is to replace four- to five-year old, higher mileage vehicles; the three vehicles being replaced have higher mileage; the vehicles are driven hard and begin to develop engine problems.

Councilmember deHaan inquired whether the allotment for replacing the three vehicles is in the budget, to which the Acting Police Captain responded in the affirmative.

Councilmember deHaan inquired how many additional vehicles would be replaced during the balance of the fiscal year.

The Acting Police Chief responded none; stated that five marked police vehicles are usually replaced every year; only three vehicles are scheduled for replacement this year.

Councilmember deHaan stated that the Council requested a more detailed Citywide vehicle inventory.

Vice Mayor Gilmore stated there should be a written, Citywide policy; noted Police Department needs would differ from Public Works; stated the supplemental report indicates other cities replace vehicles at higher mileage; requested that the policy include mileage replacement comparisons with other cities and explanation of why the City replaces vehicles with lower mileage.

The Acting Police Captain stated that a 65,000 to 75,000 mile vehicle replacement is not abnormal; the City garage mechanic is concerned with the idle hours.

Vice Mayor Gilmore stated that the number of vehicles that are replaced may not be the same as before because of tough budget times; the City might need to go longer before replacing vehicles.

Councilmember deHaan stated that he looks forward to receiving a policy with input from the Public Works Department; inquired what would be the impact if a six-month deferral; inquired whether vehicles have hour meters.

The Acting Police Captain responded that hour meters are not installed; a six-month deferral would be difficult; the vehicles take a beating.

Councilmember deHaan inquired whether the three vehicles are

currently in service, to which the Acting Police Captain responded in the affirmative.

Councilmember Daysog stated the Council should review vehicle replacement in terms of protection and service to the residents; the Police Department needs the best equipment or there could be safety issues; six-month deferral is not an option.

Mayor Johnson stated more detailed information on vehicle maintenance costs is needed; there is no explanation why the vehicles are to be replaced.

The Acting City Manager stated that the matter would be brought back to the Council in August with more information.

Councilmember Matarrese stated the matter should be brought to Council with more justification on why the three vehicles need to be replaced; inquired whether the vehicles have failed in the field and whether there has been a lapse in service, other problems or potential safety issues.

The Acting Police Captain responded there have not been significant problems with the vehicles failing in the field; history has shown that as mileage increases problems could arise.

Vice Mayor Gilmore requested information on trade-in value; stated the City might get a higher trade-in value now than in a year.

The Acting Police Captain stated that vehicles become inoperable because of safety reasons; vehicles need to be available.

Councilmember deHaan inquired the number of vehicles and the number of employees assigned to the vehicles, to which the Acting Police Captain responded 23 vehicles are used by 43 officers.

Councilmember deHaan inquired how much a police vehicle costs, to which the Acting Police Captain responded \$32,000.

Councilmember Matarrese concurred with Councilmember Daysog regarding not deferring replacement for six months.

Councilmember deHaan inquired how many hours per day vehicles are used, to which the Acting Police Captain responded that the majority of the vehicles are used 24 hours per day.

Mayor Johnson requested that a written policy be brought back to the Council at the first or second City Council meeting in August.

Councilmember deHaan requested that the policy address all vehicles Citywide.

Mayor Johnson requested that the policy address all police vehicles, not just patrol vehicles.

(*05-351) Recommendation to appoint Lee Perez as a representative to the Oakland Chinatown Advisory Committee. Accepted.

(*05-352) Recommendation to authorize the Acting City Manager to execute an amendment to the Contract with MV Student Transportation, increasing the budget by \$8,000, and extending the Contract to August 15, 2005. Accepted.

(*05-353) Recommendation to approve an Agreement with Holland & Knight, LLP in the amount of \$40,000 for federal legislative advocacy, and appropriate the \$40,000 from the General Fund reserves. Accepted.

(*05-354) Resolution No. 13874, "Approving Parcel Map No. 8574 (Harbor Bay Parkway and North Loop Road)." Adopted.

(*05-355) Resolution No. 13875, "Adopting the Findings for the Non-Native Spartina Eradication Program Contained in the Final Programmatic Environmental Impact Statement/Environmental Impact Report Prepared by California State Coastal Conservancy, Adopting a Mitigation Monitoring Reporting Program and Statement of Overriding Considerations, and Approving an Agreement for Funding from the State of California Coastal Conservancy to Implement Spartina Eradication and Mitigation Measures." Adopted.

(*05-356) Resolution No. 13876, "Granting Another Designated Period for Two Years Additional Service Credit as Provided for Under Contract Amendment between the City and the Public Employees' Retirement System and California Government Code Section 20903." Adopted.

(*05-357) Adoption of Resolution Creating Special Newsrack Districts in Both the Park Street Business and the West Alameda Business Districts as Authorized in Alameda Municipal Code Section 22-7, Newspaper and Periodical Vending Machines of Article I Streets), Chapter XXII (Streets and Sidewalks). **Not heard.**

(*05-358) Resolution No. 13877, "Authorizing Filing of a Notice of Exemption for Acquisition of the Alameda Belt Line." Adopted.

(*05-359) Resolution No. 13878, "Accepting the Findings of the Cross Alameda Trail Feasibility Study." Adopted.

REGULAR AGENDA ITEMS

(05-360) Resolution No. 13879, "Appointing John W. KnoxWhite as a Member of the Transportation Commission." Adopted; and

(05-360A) Resolution No. 13880, "Appointing Eric Schatmeier as a Member of the Transportation Commission." Adopted.

Councilmember Matarrese moved adoption of the resolutions.

Vice Mayor Gilmore seconded the motion, which carried by unanimous voice vote - 5.

The City Clerk administered the Oath of Office and presented the members of the Transportation Commission with Certificates of Appointment.

(05-361) Public hearing to consider revisions to the Development Regulations (ZA05-0003) contained within Chapter XXX of the Alameda Municipal Code (AMC), more commonly referred to as the Zoning Ordinance, with respect to building height limits and number of stories; exceptions to minimum side yard requirements for additions to existing residences, the definition for "replacement-in-kind", off-street parking regulations and reconstruction of non-conforming residential structures; and

(05-361A) Introduction of an Ordinance Amending the Alameda Municipal Code by Amending Various Sections of Chapter XXX (Development Regulations). Introduced.

The Supervising Planner gave a brief overview of the proposed revisions.

Mayor Johnson inquired whether the "replacement-in-kind" definition would apply to the design guidelines and solve problems that residents are having at Harbor Bay when replacing aluminum-sliding windows.

The Supervising Planner stated that the guidelines state that materials that are appropriate for the style of the house should be used.

Mayor Johnson stated residents should not have to go to the Planning Board to replace windows because of staff's interpretation of the guidelines; Harbor Bay residents are not getting permits because they have been told aluminum-sliding windows are not allowed.

The Supervising Planner stated that she was not aware of staff disallowing aluminum sliding windows as long as the windows were an appropriate style for the house.

Mayor Johnson stated that "appropriate style" is a very subjective term; muntins are prohibited; Council did not intend to have any prohibitions when the guidelines were approved.

The Supervising Planner stated the guidelines include a one-year trial period to iron out the bugs.

Mayor Johnson stated that the Council adopted the guidelines with the understanding that they would be reasonably applied; a Citywide prohibition would require that the matter be brought back to the Council.

Councilmember Matarrese stated that the guidelines do not prohibit anything, but provide direction.

Mayor Johnson stated that internal muntins between double-paned windows are prohibited Citywide; the Council did not have any expectation that there would be prohibitions in the guidelines.

The Acting City Manager stated that internal muntins are addressed under a heading of what should be allowed; that staff has been given direction to review each case individually.

Mayor Johnson stated that the City has a diverse housing type; there cannot be one rule that applies to every house.

Councilmember Daysog stated that he was concerned with changing requirements for second story setbacks; noted there have been two or three issues regarding blockage of sunlight in the past two years; that he would like to have a separate vote on second story setback regulations if the matter is voted on tonight.

The Supervising Planner inquired whether Councilmember Daysog was referring to the three-foot setback which allows going straight up or the additional two-foot setback required with an existing five-foot setback.

Councilmember Daysog responded that he was referring to remaining with the status quo in all instances; a process can be followed to receive an exception.

Councilmember deHaan inquired whether an existing roof pitch could be replicated.

The Supervising Planner responded as long as the height limit is not exceeded.

Councilmember deHaan stated that closing down the roof pitch to stay within the height limit creates architectural problems.

Mayor Johnson opened the Public Hearing.

Proponent: Ken Carvalho, Alameda.

There being no further speakers, Mayor Johnson closed the Public portion of the Hearing.

Councilmember deHaan moved introduction of the ordinance with the direction to review roof pitch and window issues.

Councilmember Daysog requested to have a separate vote on second story setbacks.

Councilmember deHaan amended his motion to exclude second story setbacks.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

Vice Mayor Gilmore moved introduction of the ordinance provisions on second story setbacks.

Councilmember Matarrese seconded the motion, which carried by the following voice vote: Ayes: Councilmembers deHaan, Gilmore, Matarrese, and Mayor Johnson - 4. Noes: Councilmember Daysog - 1.

(05-362) Public hearing to consider Zoning Text Amendment (ZA05-0002), amending Alameda Municipal Code Section 30-4.8(c) to add "Boutique Theater" as an allowable use in the C-1 zoning district, subject to Use Permit approval. Applicant: Alameda Theatre Project Inc. Address: All Neighborhood Business Districts (C-1);

(05-362A) Resolution No. 13881, "Adopting a Negative Declaration for ZA05-0002." Adopted; and

(05-362B) Introduction of an Ordinance Amending the Alameda Municipal Code by Declaring Boutique Theaters to be Uses Permitted by Use Permit within the C-1 Neighborhood Commercial Zoning District of Chapter XXX (Development Regulations). Introduced.

Mayor Johnson opened the Public Hearing.

Proponents: David Hart, Alameda; David Kirwin, Alameda; Jon Spangler, Alameda; Susan Older, Alameda; Peter MacDonald, representing Mark Haskett; Blake Brydon, Alameda; Bernard Clark, Alameda; Mark Haskett, Alameda; and Ami Dimusheva, Alameda.

Opponent: Former Councilmember Barbara Thomas, Alameda.

There being no further speakers, Mayor Johnson closed the public portion of the Hearing.

Mayor Johnson requested staff to respond to the issue of providing notice to C-2 zoning areas [raised by Ms. Thomas].

The Supervising Planner stated the C-2 Zoning District permits theaters, including movie theaters, as a permitted use; theaters do not have to go through the use permit process that the proposed text amendment would require for the C-1 district.

Mayor Johnson inquired whether the [movie theater] use is already permitted in the C-2 district, to which the Supervising Planner responded in the affirmative.

Councilmember Matarrese stated speakers were surprised that the matter was before the Council; the normal process is being followed; nothing is being hidden; the process is completely open and public; the public should be aware that the action is not redundant and is the way business is conducted.

Mayor Johnson noted the Council had not considered the issue before.

Councilmember deHaan stated that he is concerned that seventeen areas could be affected; hopefully, there are enough safeguards; not all [C-1] areas have the same attributes of the [theater] location on Central Avenue; inquired whether there are outstanding code issues at the cinema.

The Acting City Manager responded the one [outstanding] issue is the projection booth; stated the Applicant has been working cooperatively with the Building Department; the issue is clearance around the projector.

Councilmember deHaan inquired whether the initial life safety issues were resolved, to which the Acting City Manager responded in the affirmative.

Councilmember deHaan inquired when the outstanding [projector]

issue would be corrected.

Mr. MacDonald, the Applicant's attorney, responded that the Applicant has all materials ready to be submitted tomorrow; the Building Official cannot accept the application until after the zoning change is approved.

Vice Mayor Gilmore stated the Planning Board does not have the authority to enact zoning changes and only makes recommendations to the Council; therefore, the matter had to come before Council; the matter before the Council is not approving the Central Cinema; the change will affect seventeen zones in the City; other people might consider a similar business if Mr. Haskett is successful; the approval is not for just one theater in one location; that she is concerned that there could be more than one boutique theater in a neighborhood.

Mayor Johnson stated that she is interested in just rezoning the one C-1 district [at Central Avenue and 9th Street]; noted the Council was not approving just Mr. Haskett's operation; stated Mr. Haskett could sell the business and neighbors might not like the new owner or the types of movies the new owner shows; the Rocky Horror Picture Show could be shown three times a day seven days a week; the City can only regulate adult movies; the approval would allow other cinemas in other areas with other operators; inquired whether there could be a restriction that if Mr. Haskett sold his operation, the Use Permit would not go to the next operator.

Mr. MacDonald stated that he was asked to respond publicly as to whether they would consent to the request; the rule is that a Use Permit runs with the land and cannot be personalized; the general rule is that there are considerations built into the Use Permit to allow the Use Permit to be revoked if things happen which are not consistent with the Use Permit.

Mayor Johnson stated the City can only regulate adult movies; there might be another type of operator that would want to take over the business; the neighbors like Mr. Haskett and like what he is doing; her concern is that he might sell the business.

Mr. MacDonald stated one reason people build up businesses is to have something that can be sold; not being able to sell the business means said effort could never be achieved; to regulate the type of movies or operators are over and above the terms of reasonably conditioned Use Permit and would destroy the value of the business.

Mayor Johnson stated the neighbors should understand that if Mr.

Haskett sells his business to someone else, they might not like the types of movies the next operator shows.

Mr. Clark stated the issues being raised are valid; there should not be concern over the type of movies showing, other than adult movies; the use would be revoked if anything caused a public nuisance, such as being too loud.

Mayor Johnson stated that she would not want a theater in her neighborhood; that she has concerns with imposing the regulation on the sixteen other C-1 zoning areas and is not convinced that the zoning could not be changed for just the one area.

Vice Mayor Gilmore stated the permit runs with the land; basing a decision on a particular owner is a bad policy; her decision will be based on the merit of the use, not the owner.

Councilmember deHaan requested staff to address whether the use could be limited to just one area.

The City Attorney stated the Mayor prefers to deal with the one case, rather than Citywide; after analyzing the law carefully and understanding said preference, she has to take responsibility for the legal opinion that the issue must be dealt with Citywide.

Mayor Johnson inquired why two or three [C-1] districts in more commercial areas could not be made a different zone; stated there are C-1 zones in the Park Street and Webster Street areas adjacent to more commercial areas; some C-1 zones are in very residential areas; inquired why a few C-1 zones could not be called something different and boutique theaters could be allowed in said areas, without changing the existing geographic boundaries.

The Supervising Planner stated staff tried to create criteria for the C-1 districts; finding a solution is very difficult because the areas are so diverse; the amount of traffic was reviewed; all districts have adjacent residential areas.

Mayor Johnson inquired why three districts in more commercial areas could not be renamed and boutique theaters could be allowed in said areas; stated the geographic area of the zoning district would not be changed; only the name would be changed and boutique theaters could be permitted.

The Supervising Planner stated if Council could direct which districts and why, staff could review the matter; staff was having difficulty with determining why [the reason for selecting said districts].

Mayor Johnson stated the Council could not do so tonight.

Councilmember Matarrese inquired whether live theater with unlimited seating is already allowed in all C-1 districts, to which the Supervising Planner responded in the affirmative.

Councilmember Matarrese stated putting a ceiling of 49 seats restricts risk to and impact on the neighborhood; the same concerns exist with live theater; some performances might not be wanted in neighborhoods; allowing a movie theater has less impact than a live theater; there is not a huge risk; the existing business would be legalized; that he would be happy with only selecting several of the areas as a trial; there is not a great impact on the other sixteen districts since live theaters with unlimited seating are permitted.

Mayor Johnson stated that she does not have a problem with Central Cinema, but would like to restrict the regulation as much as possible; if the use could be restricted to a small number of C-1 areas or if very residential C-1 areas could be eliminated, the City should do so; although live theater has been allowed for a long time, allowing boutique theaters now should be done in a more restrictive way; that she supports the station business districts, which are part of Alameda's history; the stations have to keep going to create a walk-able community; however, the areas have conflicts because residences are adjacent to businesses; that she would like to go forward with Central Cinema, while restricting the use to as few C-1 areas as possible; the matter of limiting the areas has not been thoroughly reviewed.

Councilmember deHaan inquired whether there have been requests for live theaters in other areas, to which the Supervising Planner responded the only one she is aware of is the Altarena.

The Acting City Manager stated staff had multiple meetings on how to reduce the number of areas; there was concern about spot zoning; staff did extraordinary noticing to ensure residents around the station areas were aware of the proposed change; the Council could move forward tonight and staff could come back at a later date to undo portions [limit number of districts].

Mayor Johnson stated her goal is to limit the use to as few areas as possible; one idea is to name several areas a different zoning district; people do not notice use until there is a problem.

Councilmember Daysog stated [Central Cinema's] start was high drama, but has potential to be a feel good story; time will only

tell if the Cinema will be a one hit wonder or a movie for the ages; the issues that the Mayor is bringing up can be tackled; there is enough information to proceed with the action tonight; issues raised can be addressed; that he doubts many people will submit applications for theaters; there is a window of opportunity to move forward with the theater.

Councilmember Matarrese requested staff to review making the boutique theater regulations apply to all theaters, eliminating the possibility of having a 200 seat live theater.

Mayor Johnson concurred with Councilmember Matarrese's suggestion; stated that staff could review both issues.

The City Attorney stated the Council could direct that the zoning text amendment be brought to the Planning Board for an additional amendment in terms of applying restrictions on live theater.

Councilmember Matarrese stated a flood of people will not try to get into the theater business; there is cap on the number of seats; the risk is fairly low; the regulations provide definition for what is already an unrestricted business; the two seem no different, except for the fact that there would be a movie projector instead of actors in front of the audience.

Mayor Johnson stated that she supports the suggestion to go forward and bring back modifications; concurred with Councilmember Matarrese's suggestion to restrict live theaters.

Councilmember Matarrese moved approval of the staff recommendation [adoption of the resolution and introduction of the ordinance] with the direction to come back with modifications to provide better control and planning, including exploring limiting the number of districts where the activity will be allowed.

Councilmember Daysog seconded the motion, which carried by the following voice vote: Ayes: Councilmembers Daysog, deHaan, Matarrese and Mayor Johnson - 4. Noes: Vice Mayor Gilmore - 1.

Vice Mayor Gilmore stated that she could not support the change based on the merit of the operator instead of policy; the modifications that will return might address her concerns.

(05-363) Recommendation to approve a revised Donor Recognition and Named Gifts Policy for the Library.

The Acting City Manager noted that staff provided a new set of photographs.

Mayor Johnson inquired whether name plaques would be placed on shelves, to which the Library Director responded in the affirmative.

Mayor Johnson inquired whether the names would remain on shelves forever; stated \$100 does not seem high enough for having a name remain forever.

The Library Director stated the names remain for the life of the item, not the life of the library; the name would not remain if a shelf is replaced.

Mayor Johnson stated \$100 does not seem like a large amount.

The Library Director stated setting a reasonable amount could raise a lot of money; \$1 million was raised mostly from \$100 shelves in another library.

Councilmember Matarrese noted shelves, which only cost \$100, might last longer than chairs, which are \$500; stated that the policy is a good way to raise money.

Councilmember deHaan inquired whether there is maintenance involved with the plaques.

The Library Director responded possibly, but problems with plaques are minimal.

Councilmember deHaan stated plastic plaques could be damaged.

The Library Director stated an inexpensive, but durable and attractive, shelf tag would be used.

Dr. Jeptha Boone, Alameda Free Library Foundation President, stated the foundation was formed 6½ years ago to raise money for the library; the foundation has raised \$65,000 and is trying to raise \$600,000 for art, branches and collections; urged approval of the policy.

Councilmember deHaan moved approval of the staff recommendation.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

(05-364) Consideration of waiving attorney client privilege of September 12, 2003 and April 10, 2001 legal opinions regarding vehicle allowance for City Manager and City Attorney.

The City Attorney stated that she would step down during the agenda item and the next agenda item [paragraph no. 05-365], which have to do with her Contract.

Mayor Johnson stated that the Council has a copy of the legal opinion; Council can vote to make it available to the public; there is nothing in the opinion that needs to be confidential.

Councilmember Matarrese moved approval of waiving attorney client privilege restrictions on the memos.

Vice Mayor Gilmore seconded the motion, which carried by unanimous voice vote - 5.

Mayor Johnson stated the opinion is an interpretation of a Contract provision; last year, she was informed that the City Manager's vehicle allowance had increased; in November, she asked the City Attorney to review whether the City Manager's vehicle allowance had changed; the response she received back was it had not changed; a Councilmember then learned that the vehicle allowance for the City Manager was \$372; Councilmembers questioned how the vehicle allowance was increased because the Contract states that the vehicle allowance is \$250; Council asked the Human Resources Director to check on the matter; last week, the response back from the Human Resources Director was that a legal opinion was obtained from outside counsel that indicated that the vehicle allowance should be increased because of a change in tax; the reason the matter is on the agenda is because her response to the Acting City Manager was that the amount should stay the same and should remain the \$250 in the Contract until the Council agrees to change the amount; that she requested that the Acting City Manager change the amount back to \$250 and he stated that the Council should give direction on the matter, which is why she placed the matter on the agenda; the Council should determine what happened and has wondered why the amount is higher than the amount in the Contract; the Council should decide whether the vehicle allowance stays the higher amount or goes back to the Contract amount; there should be a Contract amendment; that she is interested in other Councilmembers' thoughts; that she does not recall seeing the legal opinion; in 2001, the memo to the City Attorney from Linda Tripoli states: "You have asked this office for a legal opinion relative to an issue that has arisen with regard to the car allowance;" the opinion is dated April 10, 2001; that she understands that the change in amount did not go into effect until October, 2003; that she does not recall seeing the opinion in 2001 or 2003; when she asked in 2004, she was informed that there were no changes; that she is sure the response meant there was no change in the net

amount of the vehicle allowance, but there had been a change in the gross amount; noted the Human Resources Director was present if anyone has questions.

Councilmember Matarrese stated that when a salary is provided in a Contract, Council does not have someone go back later and adjust the salary so that the net after taxes is the amount stated in the Contract; that he views the vehicle allowance in the same fashion; upholding the Contract and putting the amount back to \$250 is simple.

Vice Mayor Gilmore inquired whether the \$250 was net when the Contract was enacted and something happened, such as a change in the IRS code, to make the amount no longer net.

Mayor Johnson stated the amount in the Contract is \$250; there was a change in the tax code; the amount became taxable; the benefit in the Contract was not stated as a net amount; it is a question of fact, not laws; the question [of increasing the amount] should have been addressed to the Council, not an outside attorney.

The Human Resources Director stated that she does not know the tax Code or if any changes were made to the tax Code; the benefit was non-taxable when first provided and then became taxable, which is why the legal opinion was given to the City Attorney; the opinion was sent to the Finance Director who continued to provide the benefit as a tax-free benefit for the next year to year and a half; after said time, it was discovered that the benefit should be taxable and put into the payroll system as a taxable benefit; the additional memo came forward to state that if the vehicle allowance is going to be a taxable benefit, the net amount needs to be \$250 per month.

Councilmember deHaan stated the opinion was for the two Contracted positions of City Attorney and City Manager; inquired how the legal opinion would apply to the \$250 allowance given to other Department Heads; inquired whether other Department Heads were not entitled to the adjustment since they are not under Contract.

The Human Resources Director responded that she does not know the exact language of the Contracts for the City Manager and City Attorney; that she cannot appropriately answer the question; auto allowance for all other employees is through the payroll system and is a taxable benefit.

Councilmember deHaan stated there could be a major impact if the legal opinion was exercised all the way through the system; the amount of the car allowance would depend on the amount of money a

person makes; the more an individual makes, the higher the car allowance would be.

The Human Resources Director responded in the affirmative; stated taxes are based upon income.

Councilmember Daysog stated the City Manager and City Attorney received a check for \$250 with no taxes taken out before 2001; something happened, whether an IRS ruling or direction was to have the car allowance go through payroll; the amount would be reduced with taxes assessed; the issue then becomes a labor contract issue of good faith; the \$250 amount was negotiated on a good faith basis; a staff member, such as the Finance Director or Human Resources Director, with Linda Tripoli's letter from April, 2001, opined that the amount would have to be increased in order to remain whole at \$250; in the highest tax rate, mathematically the cost would be roughly \$80 on the federal side and 11-12% on the State side, which comes out to roughly \$370; that he does not see the problem.

Mayor Johnson stated that in her opinion, the problem is that the matter should have come to the Council; when the Council approves a Contract that states the person receives \$250 per month, the amount is \$250 per month; if there is a subsequent tax change or ruling that makes the amount taxable, the matter should come to Council to ask if the amount should be \$250 or increased now that taxes have to be paid on the amount; the matter is not really a legal issue, rather it is a matter of determining whether the Council wants to change the amount now that there is a tax consequence.

Councilmember Daysog stated the Council's intent was always to keep the amount at \$250; that he cannot imagine that the Council wanted the amount lowered in 2001; that he can only imagine that the memo issued in 2001 and circulated to the City Council was consistent with what the Council wanted.

Mayor Johnson stated the clearest way to know what the Council intended would be to ask the Council; Council sets amounts for salaries, vehicle allowances for other people, and all kinds of things, which are always gross, not net; many benefits provided have tax consequences.

Councilmember Matarrese stated it is a question of process, not amount; the process should be that if there is a change that incurs a higher dollar outlay than what was done before or if there is a question of intent, the matter, under Contract or Memorandum Of Understanding (MOU), should come to the Council; the issue is not hugely complicated; that [bring the matter to Council] should be

the rule now; before, the intent was interpreted by individuals.

Councilmember Daysog stated the memo was circulated to Council.

Mayor Johnson stated that she is not sure the memo was provided to Council; the memo went to Finance in 2001 and indicated a copy went to Council, but Finance never implemented the change; that she questions whether the memo even went to Finance in 2001.

Councilmember Matarrese stated the policy that he is looking for is that if there is a dollar figure in a contract, that the matter should return as a Contract or MOU amendment.

Mayor Johnson stated sending a copy of a memo to the Council is not a way of notifying the Council.

Councilmember Matarrese stated the question is not notification; the question is approval; there is an easy fix: going forward, all changes will come to Council for a vote.

Councilmember deHaan concurred with the suggestion; stated policy should be set going forward; the Contract for the new City Manager states that the amount is a fixed amount; a new Contract is being negotiated with the City Attorney and the matter can be clarified; inquired what will be done in the interim in the next five months; stated putting the matter in the open to understand how the City reached the current status is good; safeguards can be put in place.

Mayor Johnson stated the Council voted to make the legal opinion a public document and should call the next agenda item to address the policy.

(05-365) Discussion and recommendations regarding City Manager and City Attorney contract provisions pertaining to vehicle allowance limit.

Councilmember Matarrese stated his previous comments [under the previous agenda item, paragraph no. 05-364] hold.

Mayor Johnson and Councilmember deHaan concurred.

Councilmember Daysog that he does not have a problem with the direction to have issues come back to the City Council; however, when he received the legal opinion in 2001, he felt it was consistent; going forward, Council's request for everything to come before Council is acceptable.

Councilmember deHaan stated actions should be done equitably among

the rest of the people who receive automobile allowances and; adjustments should have been made accordingly after the opinion.

Councilmember Daysog stated the car allowance for others is taxable and done through payroll.

Mayor Johnson stated the amount is a gross amount; if the car allowance for other employees is \$250, like the City Manager and City Attorney, the amount is taxable and other employees receive \$160.

Councilmember deHaan stated a select two were isolated to receive the adjustment, rather than reviewing how the law affects other employees.

Mayor Johnson stated changes in the Contract should be done through a vote of the Council; sending a carbon copy to the Council is not a vote of the Council; the Council can only act by voting and cannot act by non-response or consent by silence; concurred with Councilmember Matarrese's comments that it is a process question; the process that was used was not appropriate.

Councilmember Daysog stated that he has a problem with stating that something that happened in 2001 was inappropriate; any Councilmember could have objected when the memo was received; no one objected; things are being done differently in the new era.

Mayor Johnson stated the Council should have clear expectations of how to handle Contract amendments.

Vice Mayor Gilmore stated the Council is indicating how the matter will be handled in the future.

Mayor Johnson stated the Council has to vote to change a Contract.

David Kirwin, Alameda, stated that extra benefits always have to be declared for tax purposes; Council seems to be putting the benefit on payroll and covering the tax burden, which seems awkward.

Mayor Johnson stated the Council is trying to undo the past practice [of covering the tax burden]; Council wants to have the amount set as the amount the employee receives regardless of the tax consequences.

Councilmember Matarrese stated a decision has not been made [about setting the vehicle allowance amount]; that he was only requesting that changes require a vote of the Council.

Mayor Johnson stated that her preference would be to set the [gross] amount at \$250; the matter can be addressed when the new Contract with the City Attorney is negotiated; inquired the clearest way to make a record of the fact that any changes to Contracts have to be brought to the Council for a vote; inquired whether the action should be a resolution.

The Acting City Manager responded staff could bring the matter back to Council.

Mayor Johnson inquired whether the matter would return as a resolution, to which the Acting City Manager responded in the affirmative.

Councilmember Matarrese stated Council would address the [vehicle allowance] amounts later.

Vice Mayor Gilmore noted the item brought back would be a policy.

(05-366) Proposal for City Council Oversight on Expenditures from Outside Counsel Appropriations.

Mayor Johnson stated the matter was on the Closed Session Agenda at the last meeting; the matter was continued to tonight because the preference was to address the matter in open session.

The City Attorney stated the proposal has limitations on spending, settlement authority, additional reporting requirements and limitations on the hiring of outside counsel through an RFP process, creating four outside counsel panels.

Mayor Johnson stated that her intent is not to limit the amount of money the City spends on outside counsel; costs cannot be known ahead of time; the amount is not her concern; her concern is the hiring of outside counsel; approving the hiring of outside counsel can be brought to the Council without a dollar limit; there is concern about litigation strategies and not setting dollar parameters because the other side can be tipped off about how committed the City is to the litigation; that she does not understand why the matter cannot be brought to the Council stating the attorney to be hired for the particular case; the Council approval could have no dollar information included; the names of counsel and how much is paid per month is in the bills for ratification; who represents the City is not a secret; the amount and budget need to be kept confidential; the Council has indicated the City Attorney should be given authority to cover exigent circumstances; the Council does not want a special meeting every time the City is sued; inquired whether there would be a problem

with setting an amount to cover the interim period and bringing the authority to hire outside counsel to the City Council, without limitation on dollar amounts.

Vice Mayor Gilmore stated there should not be a special meeting for \$3,000 if the City Attorney needs to hire a transactional attorney or if there is a tax question that comes up through the Finance Department.

Mayor Johnson concurred with Vice Mayor Gilmore.

Vice Mayor Gilmore stated that if a dollar amount were not set, the Council would be involved in a \$3,000 decision to hire a tax attorney.

Mayor Johnson stated Council could discuss a dollar limit; if the Council had known about hiring Linda Tripoli to give an opinion on vehicle allowance, Council might have paid more attention to the issue; the Council should know who is working for the City, what people are being hired to do and why; that she does not have problem with a limit if the issue is minor.

Vice Mayor Gilmore stated that, if the Council wants to know who is being hired, the question comes down to timing; inquired how quickly the Council should be informed after legal counsel is hired; stated there is a proposal for quarterly financial reports on the cost of outside counsel, including who the outside counsel is for each matter.

Mayor Johnson stated in a lot of cases the Council could give approval before outside counsel is hired; a lot of the hiring does not need to be immediate; regular Council meetings are twice a month; the City Attorney can hire someone and bring the matter to Council for approval at the next meeting in cases when there is not time; the Council does not want to have special meetings all the time; that she does not like the system that is in place now; the Charter states that the Council consents to the hiring of outside counsel; Council is currently consenting to hiring over \$800,000 worth of outside counsel through a line item budget allocation; the Council needs to exercise more oversight; Council can discuss the level of consent that should be set; it is a change from what has been done the past 16 years; the Council needs to exercise more oversight than in the past.

Vice Mayor Gilmore concurred with Mayor Johnson; stated that she is unclear of how the Mayor proposes to do so; the City Attorney provided a proposal; inquired whether the proposal could be reviewed.

Mayor Johnson responded in the affirmative.

Councilmember Matarrese inquired what the typical lead-time is from the time the City Attorney knows outside counsel is needed to the time outside counsel is hired.

The City Attorney responded usually the same day the City receives a lawsuit; for example, in a recent lawsuit, the City had 30 days to answer but in the interim the City had a motion for preliminary injunction; within 24 hours of receiving the notice, the Council would receive a paragraph describing the lawsuit received; the immediate notification to the Council would include a description as to what the City Attorney intends to do; a component would be the discretion would be limited through the [counsel] panels, so the Council would know who the City Attorney's office would be selecting; the panels would be reviewed annually; the reason for the immediacy is due to the requirement to respond immediately; there is a balance because when litigation is received, by the next meeting, the Council could indicate that it does not approve of what is being done and how it is being done; the practical reality is that within the first two weeks, significant initial work would be done, which is why the proposal might not be the perfect solution; a lot of knowledge will be given to the Council; there could be additional oversight and opportunities for change after seeing how the proposal works.

Councilmember Matarrese inquired whether \$35,000 would cover two weeks.

The City Attorney responded \$35,000 was picked as the average cost of litigation; the City Attorney's office actually totaled up costs and \$35,000 was the average cost; 50% of the cases are more than \$35,000 and 50% are less; the Council will know about the matter within 24 hours, get a report and budget within 30 days, and have the opportunity to schedule the matter for closed session; anything which is significant, such as a bigger case, will automatically go to Council for approval in a closed session; Council will know [about lawsuits] within 24 hours and always have the opportunity to request the matter be placed on the agenda; the City Attorney's discretion in the selection of outside counsel will be from the competitively selected panels of attorneys.

Councilmember Matarrese stated the Charter states: "The Council, or any board with the consent of the Council, may empower the City Attorney, at his request to employ special legal counsel;" what is being discussed is how the Council empowers the City Attorney to make choices; a practical approach is to empower a certain dollar

amount to get the ball rolling since Council meets every two weeks; the empowerment lasts only until the next Council meeting and the matter is discussed if the amount would be higher, which is why he was asking about the \$35,000; using said amount is acceptable if the amount can carry the day; the Council has to meet its Charter obligation to empower the City Attorney based on the threshold if there is a much larger case.

Mayor Johnson stated that she does not have a problem with said suggestion; \$35,000 [could be spent] until the next Council meeting; at the next Council meeting, the Council would vote to hire the outside counsel; inquired whether Councilmember Matarrese was making said suggestion.

Councilmember Matarrese stated to use the language in the Charter, it empowers the City Attorney to employ outside counsel.

Vice Mayor Gilmore inquired whether the City Attorney has \$35,000 to spend; for example, a lawsuit comes in, the City Attorney can spend \$35,000, notifies the Council by e-mail, etc. and at the next Council meeting, the Council gets a status report.

Mayor Johnson stated the hiring of the attorney that the City Attorney is suggesting would be brought to Council at its next meeting.

Vice Mayor Gilmore stated the City Attorney could not do so when the City is sued.

Mayor Johnson stated that the City could always change attorneys; that she assumes the Council would approve the attorney that the City Attorney suggests.

Vice Mayor Gilmore inquired whether said suggestion means that the attorney has not started work yet.

Mayor Johnson responded in the negative; stated the City Attorney can spend \$35,000 until the next Council meeting, when the hiring of outside counsel comes to the Council for approval.

Councilmember deHaan noted said suggestion differs from the City Attorney's proposal in the staff report; stated if the reporting segment is actively working, Council can monitor and get in the middle of things right off the bat if something goes astray; that he does not have enough questions to make drastic changes; the City Attorney can be given \$35,000, or the amount can be dropped down to \$20,000, to get started; Councilmembers will receive a report; the threshold can be changed if two or three go astray.

Mayor Johnson stated said suggestion is greater micromanagement; Council would have to keep up to date on all litigation matters; the City Attorney is responsible for management once outside counsel is hired; Council cannot be responsible for monitoring litigation and bringing the matter to the Council if a Councilmember does not like something; the Charter states the Council is supposed to approve the hiring of outside counsel; Council needs to make the approval; then, the City Attorney would handle the matter.

Vice Mayor Gilmore requested clarification of how the process would work and an example be provided.

Mayor Johnson stated the main responsibility of the Council is the Charter requirement to consent to hiring [of outside counsel]; read Charter section; stated the issue is how the Council consents to the employment of special legal counsel.

Councilmember Matarrese stated it is how the Council empowers the City Attorney; the control is telling the City Attorney to go forward with hiring outside; the tier is the City Attorney can hire outside counsel for up to \$35,000; \$35,000 would take care of a minor matter or accommodate [Council meetings] every two weeks; once the [\$35,000] threshold is met, then the empowerment has to come back to the City Council for a vote.

The City Attorney stated that if the additional estimate is in excess [of \$35,000], the matter would always go to Council under the proposal; anything \$35,000 or less will go to Council, if the Council desires; anything estimated to be \$35,000 or more for the total litigation cost will automatically go to Council for approval.

Mayor Johnson inquired what would be done in the interim period for larger cases, to which the City Attorney responded the matter would be placed on the agenda as soon as possible.

Mayor Johnson inquired what if immediate action was needed.

The City Attorney responded the system is two tiered; stated the City Attorney would be authorized to spend up to \$35,000 without prior Council approval; for matters estimated to cost less than [\$35,000] the City Attorney hires outside counsel through the RFQ process.

Mayor Johnson stated the City Attorney's statement differs from what the Council is saying; the City Attorney is stating that she

can spend \$35,000 without Council approval; inquired whether the City Attorney would bring the matter to the City Council if the total estimate of the litigation expense is more than \$35,000.

The City Attorney responded in the affirmative; stated a large case would have to go to Council; the proposal has a number of additional restrictions for a smaller case, such as a sidewalk trip and fall; that she could only pick from a pre-qualified panel; if there is a slip and fall with a cost estimate of \$15,000, the City Attorney would review the matter and provide the Council notice, financial reports, and cost estimates; outside counsel would be selected from the panel.

Mayor Johnson stated there are small cases that should be handled in house; the City has five attorneys and should not farm out a \$15,000 trip and fall case; insurance adjustors handle said cases in the private sector; the City should not use outside counsel for little cases that should be handled in house; the City has five staff attorneys and spends a lot of money on outside counsel; the staffing level should be reviewed if every \$15,000 trip and fall is farmed out.

The City Attorney stated the proposal is to deal with one issue; there is a process in place for reviewing performance and management goals for the utilization of outside counsel going forward so that the Council establishes performance standards and expectations of the City Attorney's office; that she hears the Council; that the matter is a budget issue; the City Attorney's office will do more with less, try to do more litigation in house and work with the Council to establish the balance that the Council wants between five attorneys.

Mayor Johnson stated that she did not want to address the balance and how it would be established; further stated that she would prefer \$25,000 [as the threshold].

Councilmember deHaan inquired whether \$35,000 is for each matter.

Mayor Johnson responded in the affirmative; stated that [\$35,000] is what the City Attorney is proposing.

Councilmember deHaan inquired whether there is a period of time.

The City Attorney responded there are lots of time periods: notice within 24 hours, budget within 35 days, and quarterly financial reports.

Councilmember Matarrese stated for practical terms and Charter

interpretation, the special legal counsel is per matter, which is reasonable; someone can get started on a case; legal matters go by case; the City Attorney would not be hiring one person to do multiple cases.

The City Attorney stated it is per matter or item, not per issue, subject, attorney, etc.

Mayor Johnson stated reports must not just include litigation; the report the City Attorney provided on outside counsel only included litigation and not other non-litigation issues that outside counsel handle for the City.

Councilmember deHaan inquired about the number of cases that hit the \$35,000 threshold per year, possibly ten to twelve.

The City Attorney responded in the affirmative; stated that she estimates there are about 20 active litigation cases currently.

Councilmember deHaan inquired whether the 20 cases would reach the \$35,000 threshold, to which the City Attorney responded less than that [20 cases].

Councilmember deHaan stated no more than eight to ten cases will hit the \$35,000 threshold over a year period of time; the vast majority are in the \$3,000 to \$4,000 bracket; inquired whether the numbers [that will reach \$35,000] are low.

The City Attorney responded that in trying to get some rational basis to come up with a number, \$35,000 is the exact median of the average cost of outside counsel, so half of the cases are below and half are above.

Councilmember deHaan disagreed.

Mayor Johnson inquired whether the Council received the report that shows the actual amount spent on different litigation cases.

The City Attorney responded the report was provided last week.

Councilmember deHaan stated the report provided can be fine-tuned and should work fine; that he does not see the number [of cases \$35,000 or over] being that great; the Council is allowing 70% of the City Attorney's activity below the threshold; noted that he used the data the City Attorney provided.

The City Attorney stated [\$35,000] was found to be the median number; one reason for the reporting to Council is that changes can

be made if desired.

Vice Mayor Gilmore stated that prior to today, the City Attorney's office had a budget that the Council approved by a line item; the City Attorney had utter discretion to spend the money any way she saw fit; the Council is trying to be more cognizant of its Charter responsibilities to provide oversight of spending said money; having gone from over \$500,000 of discretionary spending to the limit of \$35,000 is a more than a prudent place to begin; the amount is not set in stone; nothing prevents the Council from putting a policy in place, seeing how it works and making changes if needed; unless there are more specific recommendations, the policy is a good place to get started because it provides what the Council is trying to move towards.

Councilmember deHaan stated that he has no problem with it; the Council still has the oversight; future changes could be made.

Mayor Johnson inquired whether approval should be via a resolution.

The City Attorney stated Council should adopt via motion, so it is a formal Council action in terms of direction.

Mayor Johnson inquired whether any changes need to be made.

Councilmember Matarrese inquired whether there is a way to put the proposal in terms of the Charter responsibility, which is not City Council oversight of outside legal counsel expense, but is City Council rules of empowering the City Attorney to engage outside counsel.

The City Attorney responded the motion could be that this is the rule of empowering the City Attorney under [Charter Section] 8-5.

Mayor Johnson inquired whether this is a policy.

The City Attorney responded it is a rule; it is a direction.

Mayor Johnson inquired why the action could not be done by resolution.

The City Attorney responded a resolution could be brought back.

Mayor Johnson stated a resolution would be clearer; the issue of Alameda Power and Telecom (AP&T) also needs to be brought back to the Council; the Council needs to discuss approving counsel for AP&T and should consider delegating authority to the Public Utilities Board.

The City Attorney stated said matter could be included in the resolution.

Mayor Johnson and Councilmember Matarrese stated Council should discuss the matter first.

Mayor Johnson suggested the resolution discussed tonight be brought back and a separate discussion be held on delegating AP&T's legal counsel.

Vice Mayor Gilmore inquired as to the difference between acting by resolution and by motion.

Mayor Johnson stated resolutions are easier for City staff to track.

The City Clerk noted resolutions are permanent records of the City Council.

Councilmember deHaan stated the proposal includes quarterly reporting requirements; that he would prefer monthly reporting.

Mayor Johnson stated that monthly reporting was acceptable to her, including the current budget on the status of the overall litigation contingency budget for not only Risk Management, but also AP&T.

Vice Mayor Gilmore stated the Council needs all of the numbers for all of the different entities that are part of legal budget the Council appropriated.

Councilmember Daysog stated the City Attorney's office has always delivered; the challenge is there is a desire to have more involvement in oversight.

Vice Mayor Gilmore concurred; stated that the action is not due to a deficiency in the City Attorney's office, rather it is the Council following what the Charter sets out as its role and bringing practices in line.

Mayor Johnson concurred; inquired whether the matter could return at the next Council meeting.

The City Attorney responded in the affirmative.

ORAL COMMUNICATIONS, NON-AGENDA

(05-367) Susan Potter, Alameda, requested guidance in procuring a permit for a mobile vendor to do business in the City; stated many companies do business without a permit.

Mayor Johnson inquired whether the request was for a mobile business at the dog park, to which Ms. Potter responded in the affirmative.

The Acting City Manager stated the proposal is to utilize a space at the dog park and other parks; the Recreation and Park Commission is working on a comprehensive policy and did not want to address the request as part of the policy; the section of the Municipal Code dealing with rolling stores could be amended; if the Council desires, staff could work with the Planning Board to draft an ordinance making amendments to address the issue.

Mayor Johnson inquired whether the Council has to direct that the matter be referred to the Planning Board; noted issues are unknown, for example merchants might oppose changes.

The Acting City Manager suggested the Planning Board consider the matter.

Mayor Johnson concurred with the suggestion.

Councilmember deHaan stated the issue of how long a business could remain on public property would need to be addressed.

The Acting City Manager stated rolling stores can only use the public right-of-way, not standing locations.

Councilmember deHaan noted Oakland allows rolling vendors on private property.

Vice Mayor Gilmore stated the Planning Board should review the matter.

Ms. Potter noted nothing is being done about the rolling vendors that are currently operating in the City without permits.

Mayor Johnson stated the City might need to start doing enforcement.

(05-368) Bill Smith, Alameda, discussed speeding vehicles.

(05-369) Jon Spangler, Alameda, stated non-food services, such as bicycle repair, should be considered when addressing mobile businesses; noted market factors, such as demand, would not support

the establishment of seventeen movie theaters in town.

(05-370) David Kirwin, Alameda, expressed concern about the megaplex theatre and parking structure project and funding; questioned whether there would be a \$1,000 parcel tax; stated parking lots adjacent to businesses are sufficient; there is a need for increased public awareness regarding the project.

Mayor Johnson responded there is not a parcel tax; requested staff to inform Mr. Kirwin where he should go for information.

The Acting City Manager stated Mr. Kirwin, and others, could meet with staff in the City Manager's Office or Development Services Department.

Mayor Johnson stated information could also be mailed or e-mailed, if preferred.

(05-371) Robb Ratto, Park Street Business Association, stated people opposed to the [theater and parking structure] project have been providing misinformation; stated PSBA would have opposed the project if a \$1,000 parcel tax were involved; noted the Downtown Vision plan from May, 2000 indicated that informal talks about a mutli-screen theater were underway.

COUNCIL COMMUNICATIONS

(05-372) Councilmember deHaan stated that he visited the Bayport site; the transit shelter on Tinker Avenue is less than adequate; the size of the sidewalks at Bayport are extremely narrow, do not match other sidewalks in Alameda, and are not pedestrian friendly; said matters should be considered when other developments are built.

ADJOURNMENT

There being no further business, Mayor Johnson adjourned the Regular Meeting at 11:17 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

MINUTES OF THE SPECIAL CITY COUNCIL MEETING
TUESDAY- -JULY 19, 2005- -6:00 P.M.

Mayor Johnson convened the Special Meeting at 6:10 p.m.

Roll Call - Present: Councilmembers Daysog, deHaan, Gilmore,
Matarrese, and Mayor Johnson - 5.

Absent: None.

The Special Meeting was adjourned to Closed Session to consider:

(05-339) Public Employee Performance Evaluation; Title: City Attorney.

(05-340) Conference with Legal Counsel - Existing Litigation; Name of case: Miraglia Enterprises v. City of Alameda.

Following the Closed Session, the Special Meeting was reconvened and Mayor Johnson announced that regarding Public Employee Evaluation, the Council discussed the performance of the City Attorney; regarding Conference with Legal Counsel, the Council gave instructions to the City Attorney.

Adjournment

There being no further business, Mayor Johnson adjourned the Special Meeting at 7:30 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

MINUTES OF THE SPECIAL JOINT CITY COUNCIL AND
COMMUNITY IMPROVEMENT COMMISSION MEETING
TUESDAY- -JULY 19, 2005- -6:55 P.M.

Mayor/Chair Johnson convened the Special Joint Meeting at 7:30 p.m.

ROLL CALL - Present: Councilmembers/Commissioners Daysog,
deHaan, Gilmore, Matarrese, and
Mayor/Chair Johnson - 5.

Absent: None.

The Special Joint Meeting was adjourned to Closed Session to consider:

(05-341/05-035CIC) Conference with Legal Counsel - Existing Litigation; Name of case: Alameda Belt Line v. City of Alameda, Alameda Belt Line v. City of Alameda, and City of Alameda v. Alameda Belt Line.

Following the Closed Session, the Special Meeting was reconvened and Mayor/Chair Johnson announced that the Council/Commission obtained briefing from the City Attorney/Legal Counsel.

Adjournment

There being no further business, Mayor/Chair Johnson adjourned the Special Joint Meeting at 7:38 p.m.

Respectfully submitted,

Lara Weisiger, City Clerk
Secretary, Community Improvement
Commission

The agenda for this meeting was posted in accordance with the Brown Act.